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December 3, 2018

VIA ECF

Hon. Katharine H. Parker
United States Magistrate Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *Daniel Kleeberg, Lisa Stein and Audrey Hays v. Lester Eber, et al.*
Civ. Action No.: 16-cv-09517-LAK-KHP

Dear Magistrate Parker:

As you know, we represent the Eber Defendants in the above-captioned action. We write to request a telephone conference with the Court and counsel to discuss the deposition schedule in light of plaintiffs' November 30, 2018 motion seeking permission to file a Third Amended Complaint [ECF164].

The proposed Third Amended Complaint contains a host of new allegations and issues that are not currently present in the case. Plaintiffs' counsel provided the Court with a redlined copy of the proposed Third Amended Complaint earlier today [ECF166], which demonstrates the volume of new allegations. The Eber Defendants are still analyzing the proposed Third Amended Complaint, but intend to oppose at least some of it.

The depositions of plaintiffs have been scheduled for December 19 and 20 in New York City. However, it is respectfully submitted that in light of the pending motion for permission to file the Third Amended Complaint, those depositions should be adjourned until a decision is rendered on the motion. The scope of those depositions will be significantly impacted by the result of the motion. Put simply, if the motion to amend is denied in whole or in part, it would be a waste of time to question plaintiffs about claims and allegations that are not ultimately part of the case.

As the Court is aware, the discovery deadline was recently extended to January 31, 2019. The Eber Defendants see no reason why the depositions of plaintiffs cannot be completed prior to that deadline, provided a decision on the motion to amend is rendered by the end of the year. Alternatively, if the deadline were pushed slightly, into February 2019, there would be no prejudice to plaintiffs. Finally, a cursory glance at the recent Docket entries, which do not even reference extensive other work done of late, establishes that there has been no delay in litigating this matter.

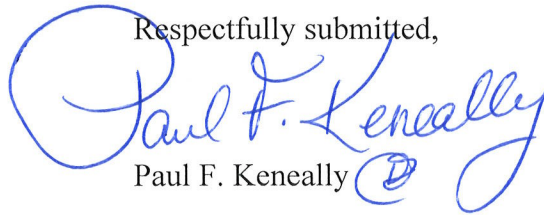


Hon. Katharine H. Parker
December 3, 2018
Page 2

A request was made to plaintiffs' counsel to voluntarily agree to an adjournment of plaintiffs' depositions pending a decision on the motion to amend. However, plaintiffs' counsel refused and is unwilling to await a decision on his motion. Accordingly, direction from the Court is respectfully sought.

Thank you for your attention to this matter.

Respectfully submitted,



Paul F. Keneally

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cc: Robert Calihan, Esq. (via ECF)
Michael J. Adams, Esq. (via ECF and email)
Brian Brook, Esq. (via ECF)
Daryoush Behbood, Esq. (via ECF)